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IN THE

Supreme Court of the United States

October Term, 1965.

No. 1043

HAROLD L. GOLDMAN,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

JACOB KOSSMAN,
1325 Spruce Street,
Philadelphia, Pa. 19107,
Counsel for the Petitioner.

CALVIN W. BREIT,
500 Helena Building,
101 West Plume Street,
Norfolk, Va. 23510,
Of Counsel.

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

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OPINIONS BELOW.

The Supreme Court of Appeals wrote no opinion in affirming the judgment of conviction by denying a writ of error. The trial judge's oral opinion denying a new trial (Appendix A, *infra,* pp. 1a-11a) is not reported.

JURISDICTION.

1. The Supreme Court of Appeals denied review on October 6, 1965 (Appendix B, *infra*, p. 12a), and denied rehearing of that judgment of denial on November 29, 1965 (Appendix C, *infra*, p. 13a).

2. The federal question was raised as shown below.

3. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Whether a criminal defendant who is a Jew is denied due process of law in violation of the Fourteenth Amendment when the Deputy City Sergeant who selected the panel advises defense counsel that 20 jurors would be chosen in alphabetical order from a list of 25, but then proceeds other than in alphabetical order and thus in fact excludes from the 20 the three jurors in the list of 25 who were Jews.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED.

1. The Fourteenth Amendment to the Constitution of the United States is sufficiently familiar as not to require quotation.

2. Nothing turns on the terms of the statute that petitioner was convicted of violating.

3. Section 19-176 of the Virginia Code of 1950 as amended provides as follows:

> "No irregularity in any writ of venire facias, in the drawing, summoning, returning or impanelling of jurors, in making out or copying or signing or failing to sign the list or in drawing more persons than four in excess of the number to be summoned shall be cause for summoning a new panel or for setting aside a verdict or granting a new trial, unless objection thereto specifically pointed out was made before the jury was sworn, and unless it appears that such irregularity, error or failure was intentional or such as probably to cause injustice to the Commonwealth or to the accused; and no judgment shall be arrested or reversed for the failure of the record to show that there was a venire facias, unless made a ground of exception in the trial court before the swearing of the jury."

STATEMENT.

Petitioner, a practicing physician, stands convicted of performing an abortion, and is in consequence under a sentence of two years' penitentiary confinement.

The details of the evidence are not in question here, nor are the incidents of the trial, even though the record discloses an unexplained interval of nearly two years between the offense charged and the date of the indictment; an unexplained interest in the case on the part of the Office of Naval Intelligence (Tr. 67, 69-71); a certificate of immunity from the naval authorities to the prosecutrix, a member of the Navy (Tr. 67-68); an unusually inflammatory closing argument by the prosecutor (Tr. 309-321); and a verdict that was twice sent back until the jury returned one that the trial judge considered satisfactory (Tr. 322-326).

The facts out of which the single question here presented arises are as follows:

One Phelps, the Deputy City Sergeant of the City of Norfolk, who was assigned as bailiff to the Corporation Court of that city, Part II, where petitioner was on trial, chose 25 prospective jurors out of an original panel of 74 to report on the morning of petitioner's trial to constitute the panel that was to serve in petitioner's case.

Those 25 jurors were verbally informed to appear on the morning of the trial. None of the 25 had advised Deputy City Sergeant Phelps of inability to serve on the jury panel for petitioner's trial, and all 25 were in fact available on the morning of that trial.

On the day prior to trial, Phelps had informed Savory E. Amato, Esq., one of petitioner's counsel, that 20 names would be chosen alphabetically from the foregoing list of 25 names, which list had previously been available to Mr. Amato.

Petitioner is a Jew. On the original list of 25 there were three male Jews, Alan Amdursky, Julius Coplon, and Joseph Mantner, all of whom would have remained on the list of the ultimate 20 had that list been selected alphabetically. There was also one Jewish female juror on the list, but by general understanding no female jurors sit in abortion cases, and in fact petitioner was tried by an all male jury (Tr. 327). Both the prosecution and the defense are normally, and were here, allowed three peremptory challenges (called "pre-emptive strikes" in Virginia) after the reduction of the panel from 25 to 20 jurors.

After the jury was sworn, the defense moved to summon a new panel of jurors on the ground that petitioner's constitutional rights had been violated by the Deputy City Sergeant's actions, and showed that both Messrs. Coplon and Amdursky were present on the day of trial. The City Sergeant contended that he knew nothing of the religions or religious convictions of any of the jurors (Tr. 11, 18). The court denied the motion (Tr. 19).

Following petitioner's conviction, the defense moved for a new trial on the ground, among others, that petitioner's constitutional rights had been violated by the aforesaid acts of the Deputy City Sergeant, which had the effect of giving the prosecution six rather than three peremptory challenges, this in violation of petitioner's constitutional rights.

In the course of arguing the motion for new trial, petitioner's counsel made the following offers of proof: That all three Jewish members of the panel of 25 were present in court on the morning of the trial; that the Deputy City Sergeant had not spoken to any of those three in respect to their availability, and that none of them had asked to be excused; and that Mr. Amato, relying on the Deputy City Sergeant's assurances of the day before that the 20 names would be chosen alphabetically from the 25, did not thereafter make independent inquiry concerning which 20 had in fact been chosen (Nov. 6 Tr., pp. 1-8). As a matter of state law (*Bailey v. Commonwealth,* 191 Va. 510, 62 S. E. 2d 28) an offer of proof is a sufficient method of raising and preserving an allegation of racial discrimination in the selection of a jury.

The motion for a new trial was denied, and petitioner was sentenced in accordance with the jury's findings (Appendix A *infra,* pp. 1a-11a).

Application to the Supreme Court of Appeals, Virginia's highest court, for a writ of error was denied: "* * * the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said corporation court." Rehearing was denied.

HOW THE FEDERAL QUESTION WAS RAISED.

1. Before the trial commenced, petitioner moved to strike the panel on the ground that the Deputy City Sergeant's elimination of the three male Jewish jurors from the panel violated petitioner's constitutional rights (Tr. 6, 19).

2. The same contention of violation of constitutional rights was contained in petitioner's arguments for a new trial on November 6, 1964 (Nov. 6 Tr. 1-3, 5-8).

3. It was repeated in petitioner's Petition for Appeal, seeking review of his conviction by the Commonwealth's highest court (pp. 11-16).

4. Finally, petitioner's Application for Rehearing urged (p. 1) his constitutional rights.

REASONS FOR GRANTING THE WRIT.

Instances where Negroes have been improperly eliminated from jury panels in violation of the plain commands of the Fourteenth Amendment are legion; there is no need to cite the sorry succession of discrimination in action, which ranges in time from *Strauder v. West Virginia,* 100 U. S. 303, through *Coleman v. Alabama,* 377 U. S. 129. The same principle has been held broad enough to reach discrimination against jurors of Mexican descent, *Hernandez v. Texas,* 347 U. S. 475, and now this case presents the unseemly exclusion, by state action, of Jewish jurors from a panel drawn for the trial of a Jewish defendant.

First. It is true that the exclusion was objected to in terms of a defendant and jurors "of the Jewish faith," and that the Deputy City Sergeant testified (Tr. 11, 18) that he did not know the religion or the religious convictions of any of the jurors.

But that was a disingenuous disclaimer that wholly fails to meet the allegation of discrimination, which of course has nothing whatever to do with the religion of the jurors in question. It is not necessary to embark on any consideration of the age-old conundrum, What is a Jew?, to realize that anti-semitism has nothing whatever to do with religion. The excesses of Nazi Germany bear tragic witness to the fact that the victim's religion was quite immaterial if only it was shown that he was in fact of Jewish descent; whether he was a professing Catholic or a faithful Protestant, whether he was an Orthodox or a Reform Jew, whether he was an agnostic or an atheist, was of no consequence; a Jew is a Jew is a Jew; off to the

gas chamber with him, regardless of his religious conviction—and with his wife, and with his children.

Here a Jewish defendant was on trial; here three Jewish jurors were on the panel of 25—we may ignore the Jewish woman, because enough remains of chivalry in Norfolk that as a matter of legal consensus no woman juror of any race or background is ever in fact permitted to serve in an abortion case; here the three Jewish jurors would have been on the smaller panel of 20 if the process of reduction had been arrived at alphabetically as the selecting officer had informed defense counsel would be done; but in fact that officer proceeded otherwise, and by wholly arbitrary action removed from the panel that was to try the Jewish doctor, petitioner here, the only three Jewish jurors who were in fact available for service thereon.

This, we submit, plainly adds up to State action in violation of the command of the Fourteenth Amendment.

Second. If what was involved here was a removal of the same three Jewish jurors from the panel by "preemptive strikes"—peremptory challenges—made by the prosecution in due course, openly and regularly, petitioner of course would have no standing to complain. *Swain v. Alabama,* 380 U. S. 220. But here the three jurors were eliminated before the prosecution ever had an opportunity to exercise any challenge whatever. Thus they were eliminated, not in the normal course, but by the arbitrary action of the selecting authority, the Deputy City Sergeant to whom the Commonwealth of Virginia had in fact delegated its powers of jury selection.

Third. Does the circumstance that by State law (Va. Code, § 19-176, as amended) the panel must be challenged before it is sworn while here the challenge came immediately afterwards supply a non-Federal ground adequate to support the judgment below?

We think not, in the circumstances of this case.

Here the Deputy City Sergeant's assurance that he would reduce the 25-juror panel to 20 by proceeding in alphabetical order, given to defense counsel the day before, a mode of proceeding that would have included the three Jewish jurors in the 20 survivors, had the effect of lulling defense counsel into security. Proceeding on the assumption—the perfectly natural and reasonable assumption—that he was safe in relying on the statement of a public officer, defense counsel simply did not double-check after the 20 jurors had been called to ascertain whether the public officer had been truthful, and had in fact proceeded as he has said he would. Thus the only fault that can be laid to defense counsel was that he mistakenly put his faith in the word of a sworn State official.

In those circumstances, we submit, the State cannot rely on the statute requiring an earlier challenge as a sufficient non-Federal ground to sustain the judgment. For, where the defense has, as here, been tricked into neglecting to secure its Federal constitutional rights because of the terms of a State statute, there is presented a situation where the non-Federal ground may properly be regarded as "a mere device to prevent a review of the decision upon the federal question" (*Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U. S. 157, 164), or, if one prefers, one where the asserted non-Federal ground is "so unfair or unreasonable in its application to those asserting a federal

right as to obstruct it" (*Central Union Tel. Co. v. Edwardsville,* 269 U. S. 190, 195).

We have, it is true, no decisions precisely in point. Cf. *Staub v. Baxley,* 355 U. S. 313; *NAACP v. Alabama,* 357 U. S. 449; *NAACP v. Alabama,* 377 U. S. 288. But the circumstance that, as this case demonstrates, the ingenuity of discrimination continues to reflect fertility and versatility, should serve to bring the present situation within the undoubted general rule expressed above.

Otherwise stated, a non-Federal ground is insufficient to bar review where the affected person has by the false assurances of a State officer been effectively prevented from availing himself of the more normal State procedure.

CONCLUSION.

For the foregoing reasons, we respectfully submit this petition for a writ of certiorari should be granted.

JACOB KOSSMAN,
1325 Spruce Street,
Philadelphia, Pa. 19107,
Counsel for the Petitioner.

CALVIN W. BREIT,
500 Helena Building,
101 West Plume Street,
Norfolk, Va. 23510,
Of Counsel.

FEBRUARY 1966.

APPENDIX A.

Opinion in Trial Court.

JUDGE'S DECISION.

In the matter of Commonwealth of Virginia vs. Harold L. Goldman, Defendant, the Court heard arguments in support of the motion for a new trial and to set aside the verdict as being contrary to the law and the evidence, having been presented by both the Defense and the Commonwealth in this matter, and was taken under advisement by the Court until this morning in order that the Court could read the transcript of testimony and read the authorities which were left with the Court by Counsel. The following answers were alleged in error in support of the aforesaid motion:

Firstly, that it was error for the Commonwealth's Attorney in his opening statement, as shown in the transcript on pages 21 and 22; "After some conversation and seeing him again later (referring to Don Freeman) he told her that he had talked to a man named Oscar Gimpelson, who told her to see Dr. Goldman, that he could help her, and tell Dr. Goldman that Oscar Gimpelson had sent her. She did go to Dr. Goldman, and she went to Dr. Goldman probably the first date, I don't know that I can—".

At this time, Counsel objected, the jury was sent in the jury room, and it was argued by Counsel that the statement as made by the Commonwealth's Attorney was prejudicial. This is contained on pages 22, 23, 24 and 25 in Argument of Counsel.

The Court discussed this matter with Counsel and instructed the jury, on pages 26 and 27 of the transcript, to disregard utterly and completely this alleged conversation as told by the Commonwealth's Attorney, and further told the jury that the purpose of an opening statement is merely what Counsel expects to prove by way of evidence. This same evidence, in reference to what Don Freeman told Juanita Winters as being information from Gimpelson, was fully developed by cross-examination by the Defense on page 121 of the transcript of the testimony.

It is perfectly clear that hearsay statements have no place in an opening statement, but when they are later brought out as evidence by those who previously object, it cannot be said that this constitutes per se reversible error in this case, and the Court emphatically instructed the jury and the Court had an opportunity to observe the jury and to review the case in its entirety with respect to those statements.

This same witness then testified further on cross-examination, at page 131, about this information, to questions propounded by the Defense, and again at page 133, this same witness stated that there were two Dr. Goldmans, and on page 134 that he thought it was Dr. Milton Goldman and not the Defendant, Harold Goldman. I cannot find bad faith, as such, on the part of the Commonwealth's Attorney, in making this statement.

Secondly, in effect, Counsel alleges that their motion to squash the jury should be sustained, because of the 25 jurors called for service, 3 male members were of the Jewish faith, and that the Sergeant, in making his list of 20 names, should have included them, and by not doing so, there was, in effect, discrimination.

It is quite candidly stated by Counsel, by remarks on page 5 of the transcript, that he knew the names of the jurors and stated that; ". . . there were 3, 4 or 5 of Jewish extraction, birth or nationality", and that with the exception of one, Mrs. Juren, at page 6, line 21, they were not listed.

The Court allowed the evidence in support of this motion, in the transcript at pages 7 through 10, allowing to be put in evidence the Defendant's Exhibits D-1 and D-2 in support of this motion.

Sergeant Phelps testified, in effect, that he called in prospective jurors and that they did not come in alphabetically, because the Court had allowed certain persons in the entire venire to be off on particular days for business engagements, as shown on page 10 of the transcript, lines 6 through 25.

The Sergeant further testified that he did not know the religious faith of Amdursky, Coplon and Mantner. He further testified that Mr. Mantner had stated to him that he had a new man in the business, page 15 of the transcript, and Mr. Coplon had said he would be busy, on page 16, and then further certain excuses of Mr. Clements and Mr. Perkins, who had agreed to come in and were available.

On page 17, the entire venire reports and are sworn and questioned. The entire list was introduced as Commonwealth's Exhibit C-1, and the intention of the whole panel being called was explained; when they report, questions of qualification by the Court and at that time certain jurors ask to be off, pages 17 and 18 of the transcript.

The Sergeant, on page 18, further testified that he was not aware of the religious convictions of any of the members of the entire venire, particularly prior

to the particular panel that had been called in for service, and that a list of extras was made.

The Court has studied Bailey vs. Commonwealth, 191 Va. 510. There is certainly no evidence of discrimination against Jewish people on the venire, by this evidence; on this particular panel. As stated by Counsel, they were included on the particular panel, approximately 3, 4 or 5 Jewish people were called in, and there were five extra.

The Sergeant, making a panel of 20, including one Jeanette Juren, certainly shows a complete lack of discrimination, and as stated in the Bailey case; ". . . the Defendant has a right to a neutral jury" . . . The Constitutional rights of the Defendant were not violated.

The mere showing that a class was not represented in a particular jury panel, is not enough to prove discrimination. This particular class was included in the jury that was called in.

A criminal jury does not have to be chosen by lot, Clarke vs. Commonwealth, 159 Va. 908; and jurors who the Court has excused on particular days do not have to serve, even though they report. Jurors may be selected for a panel by selection or by lot.

Counsel has also stated that it wished the Court to hear additional evidence, to show that Mr. Amdursky, Mr. Coplon and Mr. Mantner who were on hand, were of the Jewish faith and were available. Now, on the day of trial this motion was made, all were available and were in the Courtroom, and certainly all the names of the jurors were called, and this poses the question as to why it could not then be shown?

Counsel also desired to show that a Commonwealth witness, Don Freeman, had a business relationship

with one of the jurors who served, Mr. Stuart Baldwin, and had paid him some $20,000. in fees. Counsel stated that the integrity of the juror was not attacked or questioned, but that if, at the time the jury was chosen, such a business relationship was found to have existed, by way of the preemptory challenges, that this juror would have been removed, and that therefore, it constituted prejudice.

All members of the jury panel were asked if they had formed an opinion in the case; they were asked if they had any interest in the case; they were asked if they had drawn any conclusions in the case; they were asked if they were conscious of any prejudice or bias in the case; they were asked if they were related by blood or marriage to the Defendant or to the Complainant, and they were asked if they could give a fair and impartial trial to the Defendant Goldman and to the Commonwealth, based on the law and based on the evidence.

The Commonwealth's Attorney was then asked if he had any further questions, and the Defense was futher asked if they had any further questions, and in both cases, there were no further questions.

In the absence of the attack on the integrity, bias, prejudice, propriety, fraud or bad conduct on the part of the juror, the mere fact that a juror did have a business relationship with a witness is in itself not per se sufficient ground for setting aside the verdict. A professional relationship with an injured party in a criminal case does not necessarily disqualify a person to serve as a juror. McCullum vs. State (Florida), 74 So. (2d) 74, 47 ALR (2d) 1218.

Even if such a business relationship were shown and that juror would decide it on the law and the evi-

dence, without prejudice, and had he not formed an opinion, there would be no basis for disqualification. To allow such evidence now, when the evidence was already heard and to seek to set aside a verdict because one juror, whose integrity is not attacked, but who had business dealings with a witness for the Commonwealth, cannot be allowed. Such proceedings would never allow a proper finality of verdict.

Further, the burden of proof is on the one making the allegation. 1 ALR 2d 1294 testimony was offered in support of this motion. A full hearing was given, the burden was not carried, and the fact that it was in the presence of these other people, that the alleged juror was called in that morning, further substantiated the fact that there was certainly no intentional or factual discrimination on the selection of this jury.

The third point raised concerned the testimony of one Dr. W. Bauer, as contained in the transcript on page 93, to the effect that he testified, upon referring to his record, that he had treated a person named 'Juanita Hyde'. There was no objection to the doctor referring to such record. A question was raised as to the identity of Juanita Hyde, the name Juanita Hyde, as being the person he treated, being the same person as the witness, Juanita Winters.

This same witness, Dr. Bauer, was then cross-examined at great length, and from this same record, as shown in the transcript on pages 88 through 93, and was requested to refer to this same record on page 90, line 23.

After completing this witness' testimony, Counsel for the Defense then moved to strike this testimony, because the witness could not say, in effect, that Juanita Hyde and Juanita Winters were the same

person. The Court overruled this motion. This witness testified merely to the fact of examining a Juanita Hyde on a given date, and from the evidence, it's relevant and material, because the witness, Juanita Winters, testified that she went to Dr. Bauer on a particular date, and used the name "Juanita Hyde". This is shown in the transcript on page 46, at lines 10 through 17.

The mere fact that the doctor could not say that Juanita Hyde and Juanita Winters were the same individual, did not make it inadmissible. There was no objection to the doctor looking at his record, which he did, and also upon request, he referred to the same record on cross-examination. There was no objection and no issues were raised as to the recorded past recollections, or refreshing his recollection. The records were present. I find no error in this.

Fourth, there was error in allowing the rebuttal evidence by the Commonwealth, because the Defendant did not deny making such statements, but stated that "he didn't remember" and "he didn't recall", and the questions were "leading". As to this, for some reason, the first rebuttal question was correctly phrased, but not correctly typed, at page 261 of the transcript, wherein the Commonwealth prefixed the question "Did he or not" and then, after numerous questions were asked in a leading form and Counsel had noted objection to the incorrect form of the questions, and the Court sustained numerous objections after half a dozen questions, he could not prefix one, and Mr. Gordon Campbell objected to the form of the stated question, and the Court sustained the objections all the way through, until finally one was worded correctly with

"whether or not". The Court sustained the numerous objections as to the form of these questions, and then allowed those properly asked.

The statement of a witness that he failed to recall or does not recollect his former statement, constitutes an adequate foundation for his impeachment, and the fact that his previous testimony or statement is inconsistent with the present one, justifies a showing of the inconsistency when he is directed to the time and place of the previous statement.

A witness cannot escape the consequences by saying he does not recall or he does not remember what he said on a previous occasion. This question has been settled in the case of Keats vs. Shelton, 63 SE (2d) 10; accord McGehee vs. Perkins, 495 SE (2d) 304, 188 Va. 116; accord Spence vs. Browning Motor Freight Lines, Inc., 77 SE (2d) 806, 138 W. Va. 748.

The fifth point, the Closing Arguments of the Commonwealth being improper. No objections were made during the course of the Commonwealth's Attorney argument of any improper or impartial reference being made to "God". The Court heard the argument, as did both able Defense attorneys, and no objection was made.

The Court is well aware of its responsibility not to allow improper or inflammatory argument, even when not objected to. The Court heard the argument, and there was nothing improper, either in the manner or in the attitude of arguing the case, or in the argument on the part of the Commonwealth's Attorney.

Sixth, objection to Instruction C-1. The essence of the argument is that there is no foundation that "the Defendant administered to or caused to be taken by Juanita Winters any drug or other thing" etc. This particular instruction is in the language of the Statute.

Objection to Instruction C-2. Commonwealth's Exhibit C-2 was a prescription given by the Defendant to Juanita Winters, for Methergine. It was stipulated and agreed by Counsel that the prescription was given by the doctor to her, and was in his handwriting, and there's expert testimony concerning that on page 115 of the transcript, by Dr. M. I. Krischer, who testified to the effect of Methergine, lines 21 through 22, stating in effect that it would cause contractions of the uterus and with a catheter would disturb a pregnancy, at page 116 of the transcript, lines 4 through 8.

This was supported also, by the testimony of Dr. A. R. Garnett, as to the use of this Methergine in addition to the catheter, that it would produce contractions which would lead to an abortion.

Seventh, the Defense claims the verdict was improper. The jury brought in a verdict, as is readily shown on page 324 of the transcript, and brought in another verdict, as shown on page 324 of the transcript. The verdict found the Defendant guilty of both counts. The second verdict did not indicate the count, and the Court reinstructed the jury again, and told them they couldn't find the Defendant guilty of both counts.

As each verdict was brought in by the jury, it was shown to Counsel for both sides, and then the jury was further instructed that they could not find the Defendant guilty on both counts of the indictment, it having been broken down into two counts to cover the Statute.

The Court certainly has the duty to advise the jury as to the form of the verdict. In both verdicts, the jury found the Defendant guilty and fixed his punishment at two years. To advise them that they

must write the particular count, and that they could not find the Defendant guilty on both counts, has only to do with the form of the verdict. The Court carefully instructed them on the form, and in no way affected their finding or the punishment.

The jury was then individually polled as to their verdict. There was certainly no error in sending the jury back to correct the verdict as to form. Carr vs. Commonwealth, 134 Va. 656.

In conclusion, upon the examination of all the evidence and exhibits introduced, and having presided at the trial, I find that the Defendant had a fair and impartial trial in every respect. He was ably represented, and there is no error present upon which the verdict should be set aside, nor can it be argued successfully that even though there are these alleged errors, they are not per se sufficient in their cumulative effect.

The jury was fairly selected, without error and without prejudice. No prejudice resulted from the opening statement, especially in view of the same evidence elicited by Defense after that opening statement, by way of cross-examination, nor were there prejudicial errors in the admission of evidence, either in chief or rebuttal.

The verdict was the verdict of the jury, corrected by them as to form only and upon proper instructions by the Court.

This case involves a purely factual question which depended largely upon the credibility of the witnesses, and in the absence of prejudicial error the verdict is entitled to great weight.

I therefore, overrule your respective motions, Mr. Campbell and Mr. Breit, to which you accept.

Your authorities, Mr. Breit, were very good.

MR. DODSON: Harold L. Goldman, the jury having found you guilty of abortion, as alleged in the first count of the indictment, fixes your punishment at two years confinement in the Penitentiary. Is there anything you wish or have to say for yourself, why the Court should not now pronounce sentence upon you?

THE DEFENDANT: No.

THE COURT: I sentence you to two years in the Virginia State Penitentiary.

MR. BREIT: If it please the Court, we intend to carry this further, and we ask the Court to continue the Defendant's bond.

THE COURT: How much is it?

MR. WHITEHURST: $5,000.00, Your Honor.

THE COURT: I think that's sufficient. Do you wish a stay, Mr. Breit?

MR. BREIT: Yes, sir.

THE COURT: I will grant you 60 days stay, and continue on the same bond.

APPENDIX B.

Judgment.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 6th day of October, 1965.

The petition of Harold L. Goldman for a writ of error and supersedeas to a judgment rendered by the Corporation Court of the City of Norfolk, Part Two, on the 10th day of November, 1964, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said corporation court.

A Copy,

Teste:

Clerk.

APPENDIX C.

Order Denying Petition for Rehearing.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 29th day of November, 1965.

Harold L. Goldman,
Plaintiff in error,

against

Commonwealth of Virginia,
Defendant in error.

UPON A PETITION TO REHEAR.

On mature consideration of the petition of the plaintiff in error to set aside the judgment rendered herein on the 6th day of October, 1965, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Clerk.